

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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ANDREW SMITH,

Plaintiff,

9:17-cv-00244 (BKS/TWD)

v.

FRICKE,

Defendant.

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**Appearances:**

*For Plaintiff:*

William J. Keniry  
Andrew E. Clark  
Tabner, Ryan & Keniry, LLP  
18 Corporate Woods Boulevard  
Albany, NY 12211

*For Defendant:*

Karen A. Butler  
Jessica A. Rounds  
Maynard O'Connor Smith & Catalinotto, LLP  
6 Tower Place  
Albany, NY 12203

**Hon. Brenda K. Sannes, Chief United States District Judge:**

**JUDICIALLY NOTICED FACTS**

Pursuant to Federal Rule of Evidence 201, the Court judicially notices the following facts.

1. Prostate cancer is a disease in which malignant (cancer) cells form in the tissues of the prostate. Prostate cancer is the second most common cancer among men in the United States.
2. The prostate is a gland in the male reproductive system. The prostate is just below the bladder (the organ that collects and empties urine) and in front of the rectum (the lower

part of the intestine). It is about the size of a walnut and surrounds part of the urethra (the tube that empties urine from the bladder). The prostate gland produces fluid that makes up part of the semen.


3. The following risk factors may increase the risk of prostate cancer: age; family history of prostate cancer; race; hormones; Vitamin E; folic acid; dairy; and calcium.
4. Prostate cancer is rare in men younger than 50 years of age. The chance of developing cancer increases as men get older.
5. Prostate cancer occurs more often in African American men than in White men. African American men with prostate cancer are more likely to die from the disease than White men with prostate cancer.
6. Tests are used to screen for different types of cancer when a person does not have symptoms. There is no standard or routine screening test for prostate cancer. The most common tests are a digital rectal exam (DRE) and a prostate-specific antigen (PSA) test. A prostate cancer gene 3 (PCA3) RNA test may be used for certain patients.
7. There are many signs and symptoms of prostate cancer, including the following: weak or interrupted flow of urine, sudden urge to urinate, frequent urination (especially at night), trouble starting the flow of urine, trouble emptying the bladder completely, pain or burning while urinating, blood in the urine or semen, pain in the hips, back or pelvis that doesn't go away, and shortness of breath, feeling very tired, fast heartbeat, dizziness, or pale skin caused by anemia.
8. If cancer is found, the pathologist will give the cancer a grade. The grade of cancer describes how abnormal the cancer cells look under a microscope and how quickly the cancer is likely to grow and spread. The grade of the cancer is called the Gleason score.

The Gleason score can range from 6 to 10. The higher the Gleason score, the more likely cancer will grow and spread quickly.

9. After prostate cancer has been diagnosed, tests are done to determine if the cancer cells have spread within the prostate or to other parts of the body. These tests include bone scans, MRIs, CT-scans, pelvic lymphadenectomies, seminal vesicle biopsies, and ProstaScint scans. The information gathered from these tests determines the stage of the cancer.
10. There are four stages of prostate cancer: Stage I, Stage II, Stage III, and Stage IV.
11. There are different types of treatment for prostate cancer, including surgery, radiation therapy, hormone therapy, chemotherapy, targeted therapy, immunotherapy, bisphosphonate therapy, and new treatments being tested in clinical trials. All treatment for prostate cancer may cause side effects.
12. Prostate cancer may come back in the prostate or other parts of the body.
13. Certain factors affect a patient's prognosis, or chance of recovery, and treatment options. These factors include the stage of cancer, how much of the prostate is affected by the cancer, whether the cancer has spread to other places in the body, the patient's age and whether the cancer has just been diagnosed or has recurred.

**IT IS SO ORDERED.**

Dated: October 14, 2022  
Syracuse, New York

  
Brenda K. Sannes  
Chief U.S. District Judge